Office-Supreme Court, U.S.
FILED
MAY 11 1981
ALEXANDER L. STEVAS,
CLERK

NO. 88, ORIGINAL

***

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

***

STATE OF CALIFORNIA,

Plaintiff,

V.

STATE OF TEXAS, *et al.*,

Defendants.

***

ON MOTION FOR LEAVE TO FILE COMPLAINT

***

BRIEF IN OPPOSITION

***

RICK HARRISON *
PATTON G. LOCHRIDGE
McGINNIS, LOCHRIDGE
& KILGORE
900 Congress Avenue
Austin, Texas 78701
(512) 476-6982

DAVID DEADERICK *
GIBBINS, BURROW, WASH
& BRATTON
Post Office Box 1452
Austin, Texas 78767
(512) 474-2441

* *Counsel of Record*

MARK WHITE
Attorney General of Texas

GILBERT J. BERNAL, JR.
Assistant Attorney General
Chief, Taxation Division
Post Office Box 12548
Capitol Station
Austin, Texas 78711
(512) 475-4721

Attorneys for Defendant,
State of Texas

TABLE OF CONTENTS

Page

STATEMENT 1

ARGUMENT

I. California's Complaint Presents No Controversy Between States Within This Court's Original Jurisdiction 5

A. California Cannot Demonstrate The Requisite Harm To Invoke Jurisdiction Under *Texas v. Florida* 6

B. *Texas v. Florida* Should Be Overruled 12

II. The Pending Interpleader Action Brought Pursuant To 28 U.S.C. §1335 Provides An Appropriate Alternative Forum For This Case 19

CONCLUSION 27

PROOF OF SERVICE 28

APPENDIX "A" A-1

APPENDIX "B" B-1

TABLE OF AUTHORITIES

Cases	Page
Alabama v. Arizona, 291 U.S. 286 (1934)	6,15
Ames v. Kansas, 111 U.S. 449 (1884)	22
Arizona v. New Mexico, 425 U.S. 794 (1976)	19,23
Ashwander v. Tennessee Valley Authority, 297 U.S 288 (1939)	23
Blackstone v. Miller, 188 U.S. 189 (1903)	13
Builders & Developers Corp. v. Manassas Iron & Steel Co., 208 F.Supp. 485 (D.Md. 1962)	22
California v. Texas, 437 U.S. 601 (1978)	1,4,7,13,14,17,18
California v. Texas, No. 87, Original (1981)	25,26
Case v. Bowles, 327 U.S. 92 (1946)	22
Chicago, R.I. & P.Ry. v. Igoe, 212 F.2d. 378 (7th Cir. 1954), *cert. denied*, 350 U.S. 822 (1955)	24
Colorado v. Kansas, 320 U.S. 383 (1943)	6,7,15
Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977)	13
Connecticut v. Massachusetts, 282 U.S. 660 (1931)	6
Curry v. McCanless, 307 U.S. 357 (1939)	13
Farmers Loan & Trust Co. v. Minnesota, 280 U.S. 204 (1930)	13

First Nat'l Bank v. Maine, 284 U.S. 312 (1932) 13

Graves v. Elliott, 307 U.S. 383 (1939) 13

Hoffman v. Blaski, 363 U.S. 335 (1960) 23

Illinois v. City of Milwaukee, 406 U.S. 91 (1972) .. 20,23

Lake Shore Nat'l Bank v. Coyle, 419 F.2d 958 (7th Cir. 1969) 11

Lummis v. White, 629 F.2d. 397 (5th Cir. 1980) 21

Massachusetts v. Missouri, 308 U.S. 1 (1939) 15,18,20,23

Michelin Tire Corp. v. Wages, 423 U.S. 276 (1976) ... 13

Milwaukee County v. White Co., 296 U.S. 268 (1935) 14

Minnesota v. United States, 125 F.2d. 636 (8th Cir. 1942) 23

Missouri v. Illinois, 200 U.S. 496 (1906) 15

Mollan v. Torrance, 9. Wheat. (22 U.S.) 537 (1824) ... 22

New York v. New Jersey, 256 U.S. 296 (1921) 6,7

North Dakota v. Minnesota, 263 U.S. 365 (1923) 6

Ohio v. Wyandotte Chemicals Corp., 401 U.S. 493 (1971) 16,20

Oklahoma v. Cook, 304 U.S. 387 (1938) 12

Orloff v. Willoughby, 345 U.S. 83 (1953) 19

Pan Am. Fire & Cas. Co. v. Revere, 188 F.Supp. 474 (E.D.La. 1960) 22

Patterson v. Louisville & Nashville R.R., 182 F.Supp. 95 (S.D.Ind. 1960) 24

Pennsylvania v. New York, 407 U.S. 206 (1972 . . . 12,17

Smith v. Sperling, 354 U.S. 91 (1957) 22

State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523 (1967) 22

State Tax Comm'n of Utah v. Aldrich, 316 U.S. 174 (1942) 13,17,18

Texas v. Florida, 306 U.S. 398 (1939) 5,6,12,13,16,17,18,19

Texas v. New Jersey, 379 U.S. 674 (1965) 17

Texas v. New York, 300 U.S. 642 (1937) 7

United States v. California, 297 U.S. 175 (1936) 22

United States v. Louisiana, 123 U.S. 32 (1887) 22

United States v. Raddatz, *__U.S.__*, *100 S.Ct. 2406 (1980)* *16*

Utah v. United States, 394 U.S. 89 (1969) 20

Washington v. Oregon, 297 U.S. 517 (1936) 6

Western Union Telegraph Co. v. Pennsylvania, 368 U.S. 71 (1961) 17,18

Wisconsin v. Pelican Ins. Co., 127 U.S. 265 (1888) . . . 24

Worcester County Trust Co. v. Riley,
302 U.S. 292 (1937) 13,17,18,23

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U.S. Const. art. III, §2 20

U.S. Const. amend. XI 23

26 U.S.C. §2001 (1976) 9,17

26 U.S.C. §2011 (1976) 9,10,17

26 U.S.C. §2055 11

26 U.S.C. §6166A (1977) 11

28 U.S.C. §341 23

28 U.S.C. §1251(a)(1) 20

28 U.S.C. §1251(a) 20,21,22,23,24,25

28 U.S.C. §1335 19,21,22,23,24

28 U.S.C. §1397 23

28 U.S.C. §1404(a) 23

28 U.S.C. §1872 16

Calif. Rev. & Tax. Code §13307(a) 11

Calif. Rev. & Tax. Code §13404(g) 11

Calif. Rev. & Tax. Code §13441 11

Calif. Rev. & Tax. Code §13842 11

Tex.Tax.-Gen.Ann., title 122A, art. 14.015(2) 11

Tex.Tax.-Gen.Ann., title 122A, art. 14.02 11

Tex.Tax.-Gen.Ann., title 122A, art. 14.05 10

Tex.Tax.-Gen.Ann., title 122A, art. 14.12 10

Tex.Tax.-Gen.Ann., title 122A, art. 14.16(A)(1976) 11

OTHER AUTHORITIES

International Enforcement of Tax Claims, 50 Colum. L. Rev. 490 (1950) 15

8 M. Whiteman, *Digest of International Law*, 523 (1967) 15

7 C. Wright & A. Miller, *Federal Practice & Procedure*, §1710 (1972) 22

13 C. Wright & A. Miller, *Federal Practice & Procedure*, §3601 (1975) 24

STATEMENT

The State of California ("California"), the once-spurned suitor of this Court's original jurisdiction *(see California v. Texas*, 437 U.S. 601 (1978)), arrives again at the Court's door in a second attempt to gain the favor of such jurisdiction. This attempt should be rebuffed for many of the same reasons as it was in 1978.

California's action arises as a result of the death of Howard Robard Hughes, Jr., on April 5, 1976, and the efforts of California and the State of Texas ("Texas") to impose domicile-based death taxes on the Hughes estate.

Mr. Hughes was born in Houston, Texas, on December 24, 1905. His father was an inventor and manufacturer. His mother, a member of a prominent family that settled in Texas in 1856, died in 1922. When his father died in 1924, a Houston court removed the disability of minority from the nineteen-year-old Hughes and allowed him to take control of Hughes Tool Company, a Houston corporation that manufactured oil well equipment.

In June of 1925 Mr. Hughes married Ella Botts Rice, a member of the distinguished Houston family for whom Rice University is named. Mr. Hughes developed interests in filmmaking and aviation and began making trips to Los Angeles, California to pursue those avocations. By 1929, when Mrs. Hughes obtained a divorce in Houston, Mr. Hughes had begun to spend a considerable amount of his time in southern California. For the next two decades he traveled extensively, spending much of his time making cross-country test flights. While Mr. Hughes based his aviation and movie activities in California, he spent much of his time traveling during this period, predominately on the East Coast.

In 1940 Mr. Hughes registered with a Houston draft board and was given a deferment to continue his

airplane and armament manufacturing in Texas and California during World War II. In sworn testimony in 1947 before a Senate committee investigating claims of profiteering on wartime contracts, he gave his residence as Houston, Texas and stated that his company was headquartered there. He expressed disdain at the attempt to impugn his integrity, stating, "I believe I have the reputation in that respect which most Texans consider important. That is to say, if I may use a corny phrase, I believe people consider my word to be my bond." Testifying in a state court civil trial in California in 1952, Mr. Hughes stated that although he was then staying at the Beverly Hills Hotel, his domicile was Houston, Texas.

From 1950 until 1966 Mr. Hughes spent most of his time in California, although he was also in Nevada, Florida, Canada and the Bahamas for significant periods of time. The majority of his time in California during this period was spent at the Beverly Hills Hotel, where he rented rooms on a day-to-day basis.

From 1966 until his death, Mr. Hughes stayed in hotels in Boston, Las Vegas, the Bahamas, Nicaragua, Vancouver, London and Acapulco. Throughout his travels--indeed, throughout his entire life--Hughes listed Houston, Texas as his residence on his passports, on all of his federal income tax returns, and on all state income tax returns he was required to file. On April 5, 1976, Mr. Hughes was placed on a private jet in Acapulco, Mexico, bound for Methodist Hospital in Houston, Texas. He died en route shortly after the plane passed over Brownsville, Texas. Mr. Hughes was buried next to his parents in Houston's Glenwood Cemetery. He had maintained his family burial plot since his father's death in 1924 but did not finally purchase a perpetuity deed thereon until 1973, soon after he had undergone major surgery in London for a hip injury that was to keep him bedridden for the remaining three years of his life.

On April 14, 1976, probate proceedings were begun in California, Texas and Nevada. A purported will of Mr. Hughes, dated March 19, 1968 (the "Mormon" will), containing substantial bequests to several charitable organizations (including the University of Texas and Rice University), surfaced in late April of 1976 and was offered for probate in California, Nevada and Texas. The Howard Hughes Medical Institute ("HHMI"), a non-profit corporation, appeared and asserted that Mr. Hughes had executed and never revoked a valid will (the "lost" will) leaving his entire estate to HHMI.

The Texas Attorney General entered an appearance for the State of Texas in the Houston probate proceeding on June 10, 1976, asking the Court to determine the validity of any purported will of Mr. Hughes and to declare Texas his domicile at the time of death. After extensive discovery a trial of the issues of domicile and the validity of the Mormon will was held in Houston beginning November 14, 1977. After three months of trial, the jury found that Mr. Hughes was domiciled in Texas at death and that the Mormon will was invalid. Judgment to that effect was subsequently entered.

Final judgment has also been rendered in Nevada finding that the Mormon will is invalid. Final judgment has been rendered against HHMI in Nevada on the lost will; the Houston probate court recently entered a summary judgment against HHMI on the lost will, which judgment will be appealed.

Proceedings to determine heirship are continuing in the Houston probate court. Over 400 people have alleged that they are the rightful heirs to the Hughes fortune. Among these are several who assert that they are Hughes' widow, and others who contend that they are his natural children.

Efforts to valuate the Hughes estate are also being

made by taxing officials. The Internal Revenue Service has valued the gross estate at $468,085,903. The Hughes estate is contesting this valuation in United States Tax Court. The California inheritance tax referee has valued the gross estate at $1,106,345,561. Although the Texas valuation has not been released to the public, it more closely approximates the Internal Revenue Service valuation than the California valuation.

On the Friday before the Houston domicile trial began, California first attempted to invoke this Court's original jurisdiction by filing its first Motion for Leave to File Complaint. On the first day of the Houston trial, California filed its Application for Temporary Restraining Order and/or Preliminary Injunction with this Court, attempting to stop the Houston trial. This Court denied California's application.

On June 22, 1978, this Court unanimously denied California's Motion for Leave to File Complaint. *California v. Texas, supra.* In response to the concurring opinions accompanying that decision, the Hughes estate filed an interpleader action in the United States District Court for the Western District of Texas, joining as defendants the taxing officials of Texas and California. That court has restrained all parties from pursuing Hughes domicile litigation in other forums.

In the interpleader case, Texas filed a motion to dismiss. California first filed two companion motions, one to add as defendants twenty-two of the over 400 alleged heirs of Mr. Hughes, and the other to change venue either to Denver, Colorado or to Los Angeles, California. The district court denied these motions, and California then filed a motion to dismiss. The motions to dismiss were granted, and the Hughes estate took an appeal of this latter ruling to the Fifth Circuit Court of Appeals. California cross-appealed the district court's rulings on its companion motions to add parties and change venue.

The Fifth Circuit reversed the district court decision dismissing the case, affirmed the district court's orders as to additional parties and venue, and remanded the case for trial. California has filed a petition for certiorari. (No. 80-1556; hereafter "Pet. for Cert.").

Texas and California are not on a collision course. Although both assert a statutory lien on the intangible assets of the Hughes estate, using California's own valuation, there are ample assets to satisfy each statutory lien. Part I (A), *infra.* In fact, contrary to California's representation, the effective combined tax rate of California, Texas and the United States is 99.7%. Thus, no statutory lien will be left unsatisfied. *Id.* Even these tax rates are contingent upon a finding in the heirship proceedings that Mr. Hughes did not leave a widow or children, a finding that has yet to be made. Nor does California take into account that in the over five years since Mr. Hughes' death, the Hughes estate has increased in value, thereby placing even more assets within the reach of the taxing authorities.

In short, two sovereign states are not at each other's throat. Both states may constitutionally impose death taxes on the estate (Part I(B), *infra*), and it appears that there will be sufficient funds to pay Texas, California and the United States any inheritance taxes which are due. If not, an adequate remedy for this most unusual case lies in the interpleader case filed by the Hughes estate. Part II, *infra.*

I.

CALIFORNIA'S COMPLAINT PRESENTS NO CONTROVERSY BETWEEN STATES WITHIN THIS COURT'S ORIGINAL JURISDICTION

California seeks to invoke this Court's original jurisdiction on the authority of *Texas v. Florida,* 306 U.S. 398 (1939). Although a dispute does now exist over

the domicile of Howard Hughes, the circumstances underlying that dispute are critically different from those which prompted this Court to determine the domicile of Colonel Green more than forty years ago. As a result, California cannot show that it will suffer injury at the hands of Texas, thus precluding an exercise of original jurisdiction under *Texas v. Florida, supra.* Part I(A), *infra.* And, as set forth in Part I(B), *infra, Texas v. Florida* should be overruled because the mere possibility that a state will obtain a tax judgment that may be partially uncollectible if a sister state collects a similar judgment does not create a controversy between states within this Court's original jurisdiction.

A. California Cannot Demonstrate The Requisite Harm to Invoke Jurisdiction Under *Texas v. Florida.*

A state seeking to invoke this Court's original jurisdiction in an effort to control the conduct of a sister state must sustain a much greater burden than an ordinary litigant, both in demonstrating that jurisdiction exists and in showing facts that warrant the exercise of that jurisdiction. *North Dakota v. Minnesota,* 263 U.S. 365 (1923). "Leave [to file a complaint] will not be granted unless the threatened injury is clearly shown to be of serious magnitude and imminent." *Alabama v. Arizona,* 291 U.S. 286, 292 (1934). "Before the court will intervene the case must be of serious magnitude and fully and clearly proved." *Colorado v. Kansas,* 320 U.S. 383, 393 (1943). *See New York v. New Jersey,* 256 U.S. 296, 309 (1921); *Connecticut v. Massachusetts,* 282 U.S. 660, 669 (1931); *Washington v. Oregon,* 297 U.S. 517 (1936).

The linchpin of jurisdiction in *Texas v. Florida, supra,* as even California now admits (Pet. for Cert. 14 n. 14),

was a demonstration that *if*[1] each competing state obtained a domicile judgment the resulting state death taxes, combined with the federal estate tax, *would* exceed the value of the estate. *California v. Texas, supra,* 437 U.S. at 609-612 (Stewart, J., concurring). In fact, leave to file a complaint was initially denied until figures were included showing that the total of all death tax claims exceeded the value of Colonel Green's estate. *See Texas v. New York,* 300 U.S. 642 (1937); Bill of Complaint in No. 11, Original (1937). Those figures could be accurately calculated, and the insufficiency of Colonel Green's estate clearly demonstrated, because his estate was primarily comprised of stocks and bonds, "[p]ractically all of [which] had a readily ascertainable market value as of the date of decedent's death." Bill of Complaint at 13, No. 11, Original (1937).

This jurisdictional prerequisite of showing harm, which must be "fully and clearly proved" (*Colorado v. Kansas, supra,* 320 U.S. at 393) by "clear and convincing evidence" (*New York v. New Jersey, supra,* 256 U.S. at 309), has been conspicuously side-stepped in California's proposed complaint. When California sought leave to file its prior complaint, and was contractually linked with the Hughes estate, it used the estate's valuation submitted on its federal estate tax return in an attempt to meet the required showing that the estate could not satisfy all three tax claims. *See* App. "A", Motion for Leave, No. 76, Original (1977). But California's current Motion for Leave to File Complaint contains no similar effort to show these jurisdictional figures and merely asserts that "*it is likely* that California will be ir-

---

[1]As further developed in Part I(B), *infra,* while the mere possibility of different domicile determinations by the two states may be a sufficient threat to an estate to establish interpleader jurisdiction under 28 U.S.C. §1335, it falls woefully short of the "clear and convincing evidence" that one state is in imminent peril of grave injury at the hands of a sister state, which must be shown to warrant exercise of this Court's original jurisdiction. *New York v. New Jersey, supra,* 256 U.S. at 309.

reparably injured by being unable to satisfy its judgment for taxes and interest." Motion for Leave 7 (emphasis added). The reasons for this omission are undoubtedly twofold. First, the nature of the assets of the Hughes estate is such that its value cannot be calculated with mathematical precision. And, second, under the very valuation which California asks this Court to adopt for other purposes (*see* Pet. for Cert. 25), the Hughes estate can fully satisfy all potential death tax claims that have been asserted against it.

Unlike Colonel Green, Howard Hughes died as the sole owner of a highly-diversified conglomerate, Summa Corporation, whose assets included, *inter alia*, hotels, casinos, raw land, mining claims, and a regional airline. Other activities of Summa's divisions ranged from helicopter manufacturing and television broadcasting to ranching, ocean mining and aircraft servicing. Since the value of this wide mix of corporate assets is not easily determinable, the likelihood that the three potential taxing authorities would reach significantly different valuations of the Hughes estate has eventuated. Because the effective tax rates of the combined claims total approximately 99.7%[2], even relatively small differences in valuation make it impossible for California to show that the estate cannot satisfy all three claims.

California takes pains to note that "[m]uch has happened since 1978..." to remove some of the uncertainties which may have caused this Court to deny its earlier complaint (Motion for Leave 14-15), but completely ignores the most vital developments which have occurred since 1978 for purposes of this case: (1) the conclusion of the Internal Revenue Service audit upon which the federal estate tax claim is based, and (2) the valuation of the Hughes estate by the California inheritance tax referee. These figures demonstrate that under California's own valuation of the Hughes estate, ample assets

---

[2]See note 5, *infra*.

exist to satisfy the tax claims of the United States, California and Texas--if indeed California should be able to obtain a judgment in its own courts.

For federal estate tax purposes, the Internal Revenue Service has valued the total gross estate at $468,085,903 and the taxable estate at $398,466,699. The maximum federal estate tax claim is therefore $241,976,486 ([6,088,200 + 77% of 388,466,699] less the maximum federal credit for state death taxes of [1,082,800 + 16% of 388,426,699]).[3] *See* 26 U.S.C. §§2001, 2011 (1976). The effective rate of that federal estate tax claim is roughly 60.7% of the *taxable* estate. In a sworn affidavit filed by counsel for the Controller of California in the federal district court interpleader action, the California inheritance tax referee valued the entire Hughes estate at $1,106,345,516, fixed the clear market value of the property in the Hughes estate subject to California inheritance tax at $1,039,712,436, and set forth the total tax due to California as $249,497,419. *See* Appendix "A", *infra.* A table of these figures clearly paints California's position:

(See table on following page)

---

[3]The estate and the Internal Revenue Service are now litigating the issue of the value of the estate in U.S. Tax Court. As a result of that litigation, the actual federal estate tax imposed may be less than the figure above.

	Valuation of Gross Estate	Taxable Estate	Approximate Effective Rate of Tax	Maximum Tax Claim
U. S.	468,085,903	398,466,699	60.7%	$ 241,976,486
CALIF	1,106,345,516	1,039,712,436	24.0%	249,497,419
TEXAS[4]	1,106,345,516	1,039,712,436	15.0%[5]	155,956,865
		Totals	99.7%	*$ 647,430,770*

California valuation of the *taxable* estate	$ 1,039,712,436
Total tax claims	- 647,430,770
Surplus[6]	$ 392,281,666

[4]Texas has not yet released its valuation of the Hughes estate. Although Texas' valuation will be closer to that of the Internal Revenue Service than to California's, to illustrate how amply all tax claims fall within California's own valuation of the estate, Texas' maximum tax claim has been computed above using the much higher California figures.

[5]California alleges that the maximum Texas death tax rate is 16% and, combined with the maximum rates of the United States (61%) and California (24%), that the total tax rate of all claims is slightly less than 101%. In fact, the maximum rate of the Texas inheritance tax with respect to the Hughes estate is 15%, and only when the Texas inheritance tax is *less* than the maximum federal credit for state death taxes under 26 U.S.C. §2011 (1976)--which on the Hughes estate is $63,231,072 (slightly less than 16% of the federal taxable estate)--does the Texas "pick-up" tax kick in to increase the Texas tax to equal the federal credit of approximately 16%. *See* Tex. Tax-Gen. Ann., Title 122A, arts. 14.05, 14.12. Here, using California's valuation of the estate, Texas' claim would exceed the federal credit, the "pick-up" tax would therefore not apply and Texas' maximum tax rate would be 15%. And, more importantly, the combined tax rate for all potential death tax claims would be roughly 99.7%.

[6]This surplus does not take into consideration the amount of administration expenses and other expenditures which have depleted

(footnote continued on following page)

These figures vividly demonstrate that, using California's own valuation, the estate can fully satisfy all potential death tax claims against it. With the "true" valuation being subject to dispute and litigation (and, therefore, so also the amounts of the ultimate tax claims), and in the absence of hard figures on the profitability of Summa Corporation during the five years since Hughes' death, *at best* California cannot prove that the estate cannot, today,[7] satisfy all three death tax claims. Indeed, because lingering state court disputes over the validity of the HHMI "lost will"[8] and over heirship[9] further cloud this already murky situation, it is im-

---

(footnote continued from previous page)

the estate, nor does it include the interest accruing on the unpaid tax claims. However, this surplus figure also does not include the tremendous increase in the value of the estate attributable to the profitability of Summa Corporation during the five years since Hughes' death on April 5, 1976.

[7]The availability of long term payments of these death taxes allows Summa as long as 10 years to generate profits to satisfy the tax collectors' demands. *See, e.g.,* 26 U.S.C. §6166A (1977); Tex. Tax.-Gen.Ann., title 122A, art. 14.16(A)(1976); *see also Lake Shore Nat'l Bank v. Coyle,* 419 F. 2d 958, 962 (7th Cir. 1969).

[8]This "lost will" purportedly left the bulk of the Hughes estate to HHMI, a non-profit entity bequests to which would be exempt from federal, California and Texas death taxation. 26 U.S.C. §2055; Calif. Rev. & Tax Code §13842; Tex.Tax.-Gen.Ann., title 122A, art. 14.015(2).

[9]Unresolved heirship questions include claims by some persons that they are Hughes' widow, and by others that they are his natural children. If any such claims are ruled valid, the inheritance tax rates of California and Texas will be drastically reduced. The Texas tax rate would fall from 15% to 6%, and under any valuation of the estate, would thereby fit within the federal credit of $63,231,062. Tex.Tax.-Gen.Ann., title 122A, art. 14.02. And the California tax rate would drop from 24% to 14%. Calif. Rev. & Tax. Code §§§13307(a), 13404(g), 13441. And using the same valuations as in the table above, the total taxes would be roughly $429,956,000, thus leaving a surplus of over $600 million, based on California's valuation of the estate.

possible for California to do so. Only one fact is clear: California's own valuation figures show that the estate assets are sufficient to satisfy all tax claims and that no injury to California will occur.[10]

California may contend that its inheritance tax referee's figures are wrong and inflated, and that California's final valuation will be sufficiently low to reflect a risk that a California tax judgment might be partially uncollectible. But California has utilized its inheritance tax referee's valuation to advance its goals in this litigation and still urges this Court to employ that figure for certain purposes. (*See* Pet. for Cert. 25). California cannot use one value to emphasize the magnitude of the various tax claims and another to convince this Court that the estate is insufficient to satisfy those claims. Under these circumstances, California simply cannot in good faith surmount the jurisdictional threshold of *Texas v. Florida* by clearly showing that it will be harmed if Texas collects its death taxes from the Hughes estate. Once again, California has failed in its "Cinderella-like compulsion to accommodate this ill-fitting precedential 'slipper.'" *Pennsylvania v. New York*, 407 U.S. 206, 222 (1972) (Powell, J., dissenting).

B. *Texas v. Florida* Should Be Overruled

If the Court should find that California's complaint adequately fits the jurisdictional mold of *Texas v. Florida, supra*, that case should now be overruled, or at

---

[10]Presumably, the estate--which is contending in Tax Court that the value of the estate assets is even less than the I.R.S. valuation--would deny that it could satisfy the tax claims of the United States, California and Texas. But the estate's position is irrelevant to this proceeding, for it cannot invoke this Court's original jurisdiction, nor can a state do so on its behalf. *Oklahoma v. Cook*, 304 U.S. 387 (1938). And California's own valuation figures preclude it from claiming that the estate assets are insufficient to pay all three tax claims.

least substantially modified so as to align its jurisdictional basis with the contours of all other original actions. Justice Stewart correctly analyzed the premises underlying *Texas v. Florida* and effectively demonstrated why it was wrongly decided. *California v. Texas*, 437 U.S. 601, 602-615 (1978) (Stewart, J., concurring). And the case at bar strikingly illustrates the soundness of Justice Stewart's conclusion.

Although California contends it is on a collision course with Texas over the issue of Hughes' domicile for purposes of death taxation, the paths of the two states in this respect actually run parallel. Each is pursuing an independent death tax claim, and "there is no constitutional impediment to both California and Texas imposing death taxes upon the Hughes estate by proceedings in their own courts." *Id.*, 437 U.S. at 612 n. 13. *See Worcester County Trust Co. v. Riley*, 302 U.S. 292, 299 (1937). The alleged theoretical inconsistency of the two domicile claims is irrelevant in an original action because the basis of the Texas tax--be it domicile or some other concept[11]--is of absolutely no concern to

---

[11]It was established long ago that two states can collect death taxes on the transfer of a decedent's intangible property. *Blackstone v. Miller*, 188 U.S. 189 (1903). For a brief period during the 1930's this rule was temporarily reversed. *Farmers Loan & Trust Co. v. Minnesota*, 280 U.S. 204 (1930); *First Nat'l Bank v. Maine*, 284 U.S. 312 (1932). The Court soon recognized its error, however, and returned to the rule of *Blackstone v. Miller, supra*. *See Curry v. McCanless*, 307 U.S. 357 (1939); *Graves v. Elliot*, 307 U.S. 383 (1939). In 1942 this Court officially overruled *First Nat'l Bank v. Maine, supra*, and held that "there is no constitutional rule of immunity from taxation of intangibles by more than one State." *State Tax Comm'n of Utah v. Aldrich*, 316 U.S. 174, 181 (1942). And this Court's view of permissible state taxation is even broader today. *See, e.g., Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977); *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 293 (1976).

It is therefore clear that Texas, if its statutes so provided, could constitutionally impose death taxes unrelated to domicile on the intangibles of the Hughes estate. Such a tax would impinge upon California's ability to collect any death tax judgment it might eventually have in exactly the same fashion as a domicile-based tax.

California. From the standpoint of California, any Texas tax judgment, regardless of its nature, is indistinguishable from "a judgment upon a simple contract debt...." *Milwaukee County v. White Co.*, 296 U.S. 268, 276 (1935). Therefore, California's only legitimate interest--the collectibility of its potential tax judgment--is wholly unrelated to domicile.

Thus, Hughes' death has generated two bilateral disputes (one between his estate and Texas, and another between his estate and California) over the issue of domicile and the right to impose death taxes. But the only possible dispute between California and Texas would simply be over money, not domicile or the right to tax. As Justice Stewart noted, that potential dispute--which is more analogous to a bankruptcy proceeding than to a suit in the nature of interpleader--is unlikely ever to constitute a controversy between states, and surely does not until *both* states have tax judgments which the estate cannot pay and thus occupy the "status of unsatisfied creditor." 437 U.S. at 615 n. 15.

For if the Court were truly to exercise its original jurisdiction to resolve a dispute between states--and not to assist the estate--the appropriate remedy would be to divide the available assets of the estate between the states in proportion to the relative strengths of their claims. *See* 437 U.S. at 613. But in fairness both to the states involved and to the estate, that drastic remedy should not be invoked until the estate has had the opportunity to defeat each state's claim in that state's courts. States will thus be spared the unpalatable chore of suing a sister state, and this Court not burdened with the unenviable and time-consuming task of resolving such cases, unless and until it is absolutely necessary. Therefore, while the present risk to the estate may justify its filing an interpleader in district court, the possible harm to California is far too speculative and remote to sustain an original action here. 437 U.S. at

615. *See also Alabama v. Arizona, supra; Colorado v. Kansas, supra.*

Parsing this dispute into its constituent parts not only explains why the domicile claims at issue here present no controversy between states, but also reveals other reasons why an original action is inappropriate. First, the nature and magnitude of any potential injury to California do not warrant an exercise of original jurisdiction. The injury to California, as opposed to the estate, is not the entirety of the Texas tax claim, but rather is only the amount by which its potential tax claim may be uncollectible. This type of dispute is simply not one "which, if it arose between independent sovereignties, might lead to war." *Missouri v. Illinois*, 200 U.S. 496, 518 (1906) (per Holmes, J.). *See generally* 8 M. Whiteman, *Digest of International Law* 523 (1967); Note, *International Enforcement of Tax Claims*, 50 Colum. L. Rev. 490 (1950). As Chief Justice Hughes stated,

> "In the exercise of our original jurisdiction so as truly to fulfill the constitutional purpose we not only must look to the nature of the interest of the complaining State--the essential quality of the right asserted--but we must also inquire whether recourse to that jurisdiction in an action by a State merely to recover money alleged to be due from citizens of other States is necessary for the State's protection." (*Massachusetts v. Missouri, supra*, 308 U.S. at 18.)

Here, where California previously entered into a conditional agreement settling its tax claim for 18% of the federal taxable estate (down from its maximum claim of 24% of the taxable estate under the California valuation), the grave injury to be suffered by California (allegedly being able to collect only 23 of its 24% tax

rate) is exceedingly hard to discern.[12]

Second, because the domicile issue underlies only the bilateral dispute each state has with the estate and not that between the states themselves, an original action under *Texas v. Florida* is inappropriate because it effectively eliminates the parties' right to have a jury resolve the domicile issue. A right to jury trial apparently does not exist in a suit between states tried in this Court. *See, e.g.*, 28 U.S.C. §1872 (right to jury in original actions at law against citizens of the United States). The usual procedure, which was utilized in *Texas v. Florida*, is to appoint a special master to take evidence and find facts, and "this Court regularly acts on the basis of the Master's report and exceptions thereto." *United States v. Raddatz*, __U.S.__, 100 S. Ct. 2406, 2416 n. 11 (1980). *See Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 511 (1971) (Douglas, J., dissenting).

Third, an original action under *Texas v. Florida* cannot, as California suggests, provide a wholesale remedy for future domicile disputes. For even California now concedes that jurisdiction under *Texas v. Florida* cannot be invoked unless the tax claims of the competing states, together with the federal estate tax, exceed 100% of the estate's assets, such that one state's claim will be at least partially uncollectible. (Pet. for Cert. 14 n. 14). Effective shortly after Hughes' death, the maximum rate of the federal estate tax was reduced from 77% to 70%, with no corresponding reduction in the amount of the maximum available credit for state death

---

[12]California still emphasizes that Texas' claim "will substantially impair the opportunity California might otherwise have to negotiate a fair and reasonable compromise of its tax claim against the Estate." Complaint ¶26. This pinpoints California's true concern, which is not its professed fear of being unable to collect some future tax judgment, but rather is that it will be unable to parlay its high tax rate into a settlement if it must first establish the merits of its claim in its own courts.

taxes. *See* 26 U.S.C. §§2001, 2011 (1976). Thus, claims by only two states--even where one has extremely high maximum death tax rates exceeding the federal credit, such as California's rate of 24%, rather than the customary "pick-up tax" which falls within the federal credit--would not exceed that 100% jurisdictional limit even on the largest of estates. On a "small" estate of two million dollars, which would incur a maximum federal estate rate of 45%, it would take competing domicile claims from at least *eight* states whose maximum tax rate equals the federal credit of 7.2% in order to provide the necessary predicate for original jurisdiction under *Texas v. Florida.* This would provide a remedy from double taxation, under the guise of resolving a dispute between states, only for the estates of the most wealthy and most mobile persons.

Finally, the proposed original action to determine Hughes' domicile for death tax purposes is decidedly unlike the escheat cases cited by California to support its complaint.[13] *See* Motion for Leave 36-37. In those cases it was indisputable that only one debt, of an amount certain, was owed and that more than one state could not require that debt to be paid without denying due process of law to the holder of the property to be escheated. A direct conflict therefore existed between states as to which would be *the one* to be paid. Here, as Justice Stewart makes plain, both Texas and California can constitutionally impose domicile-based death taxes on the Hughes estate. *California v. Texas, supra,* 437 U.S. at 612 n. 13. *See also Worcester County Trust Co. v. Riley, supra; State Tax Comm'n of Utah v. Aldrich, supra.* An original action to determine domicile is therefore not necessary to provide the states with a

---

[13] *Western Union Telegraph Co. v. Pennsylvania,* 368 U.S. 71 (1961); *Texas v. New Jersey,* 379 U.S. 674 (1965); and *Pennsylvania v. New York,* 407 U.S. 206 (1972).

forum in which to enforce their tax claims, as was needed in the escheat cases, because both states may do so "by proceedings in their own courts." 437 U.S. at 612 n. 13. No controversy between states arises with respect to domicile because *both* states can tax.

California admits that "[i]f both states can be satisfied from the estate's assets, each state may collect and enforce a judgment and there is thus no interstate controversy." (Pet. for Cert. 14 n. 14). Were California's escheat analogy and argument valid, the requirement of *Texas v. Florida* that the tax claims exceed 100% of the estate would be rendered meaningless (*see Massachusetts v. Missouri*, 308 U.S. 1 (1939), because the logic of that argument would not only permit but require an original action in every such domicile dispute, regardless of the size of the estate or the amount of the tax claims. California's true position on this point is as obscure as its argument, because in the lower courts--when the Hughes estate proffered the same escheat analogy in support of its district court interpleader action by urging that the states' tax claims are unconstitutional--California's counsel wrote:

> "Since there is no constitutional barrier to both California and Texas imposing domicile-based inheritance taxes on the Estate, the Estate's *Western Union* claim is wrong as a matter of law." (Memorandum of Defendants Cory and Alvord in Reply to Plaintiffs' Opposition to Motion to Dismiss at p. 30).

And again in the Court of Appeals, California's counsel noted the holdings in *Worcester County Trust Co. v. Riley, supra*, and *State Tax Comm'n of Utah v. Aldrich, supra*, and this Court's denial of leave to file a complaint in *California v. Texas, supra*, and concluded:

> "In light of this history, California is now satisfied that *Western Union* is not applicable

> to proceedings of this kind." (Brief for Appellees and Cross-Appellants Cory and Alvord at p. 76 n. 50).

Apparently California's satisfaction was short-lived for it has again "...'changed positions as nimbly as if dancing a quadrille.' *Orloff v. Willoughby*, 345 U.S. 83, 87 (1953)." *Id.*

For all of these reasons, *Texas v. Florida*, which was a truly unique exercise of this Court's original jurisdiction, should now be overruled. California is in no imminent danger of suffering injury at the hands of Texas, and this Court is simply not a forum in which any perceived injury to the estate can initially be averted.

II.

THE PENDING INTERPLEADER BROUGHT PURSUANT TO 28 U.S.C. §1335 PROVIDES AN APPROPRIATE ALTERNATIVE FORUM FOR THIS CASE

If the Court should decide that *Texas v. Florida* is still authoritative and that California's complaint meets the jurisdictional requirements of that decision, the motion for leave to file a bill of complaint should nevertheless be denied. The interpleader action brought by the Hughes estate in federal district court under 28 U.S.C. §1335 "provides an appropriate forum in which the *issues* tendered here may be litigated." *Arizona v. New Mexico*, 425 U.S. 794, 797 (1976)(emphasis in original). This Court can therefore exercise its discretionary power to refuse to accept a case within its original jurisdiction and remit this matter to federal district court.

This Court has long recognized its power to decline to hear cases over which it concededly has original jurisdiction, and has adhered to a philosophy that its "original

jurisdiction should be invoked sparingly." *Utah v. United States*, 394 U.S. 89, 95 (1969). That discretionary power arises from the tremendous drain which original actions place on the Court's limited resources.

> "To open this Court to actions by States to recover taxes claimed to be payable by citizens of other States, in the absence of facts showing the necessity for such intervention, would be to assume a burden which the grant of original jurisdiction cannot be regarded as compelling this Court to assume and which might seriously interfere with the discharge by this Court of its duty in deciding the cases and controversies appropriately brought before it." (*Massachusetts v. Missouri, supra*, 308 U.S. at 19).

More recently, Justice Harlan noted the increasing "frequency with which States and nonresidents clash over the application of state laws concerning taxes..." and concluded that "[i]t would, indeed, be anomalous were this Court to be held out as a potential principal forum for settling such controversies." *Ohio v. Wyandotte Chemicals Corp., supra*, 401 U.S. at 497. And devoting substantial amounts of the Court's time to resolving issues of fact and local law inevitably cuts into the Court's primary responsibility as final arbiter of federal law. *Id.*

The Court has therefore wisely decided to remit original actions to alternative forums when possible. California argues against that policy here, asserting that 28 U.S.C. §1251 (a) makes this Court's jurisdiction exclusive and bars application of the "sparing use" doctrine. This argument was squarely rejected in *Illinois v. City of Milwaukee*, 406 U.S. 91, 93-94 (1972):

> We construe 28 U.S.C. §1251 (a)(1), as we do Art. III, §2, cl. 2, to honor our original jurisdic-

> tion but to make it obligatory only in appropriate cases. And the question of what is appropriate concerns, of course, the seriousness and dignity of the claim; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had. We incline to a sparing use of our original jurisdiction so that our increasing duties with the appellate docket will not suffer.

The interpleader action filed by the Hughes estate in federal district court provides an available and appropriate alternative forum where the domicile issue tendered here by California can be resolved. California, however, contends that this pending interpleader is not a suitable alternative to an original action for three reasons: (1) lack of subject matter jurisdiction under 28 U.S.C. §1335; (2) this Court's exclusive jurisdiction under 28 U.S.C. §1251(a); and (3) "unsuitable" venue. None of these objections is valid.

The Court of Appeals has held that subject matter jurisdiction over the estate's pending interpleader is present under 28 U.S.C. §1335. *Lummis v. White*, 629 F. 2d 397 (5th Cir. 1980). The minimal diversity necessary to sustain jurisdiction was found to rest adequately on the citizenships of plaintiff-stakeholder William Lummis (the administrator of the Hughes estate in Texas) and defendant-claimant H.B. Alvord (the county treasurer of Los Angeles County). *Id.* The Fifth Circuit's ruling with respect to both of these gentlemen is correct.

The citizenship of Lummis, who is indisputably an interested stakeholder, can be utilized to support diversity jurisdiction under section 1335. 629 F. 2d at 403. In so holding, the Fifth Circuit followed the overwhelming weight of case law and commentary, as well as sound

logic, which permit and urge broad application of interpleader. *See, e.g., Builders & Developers Corp. v. Manassas Iron & Steel Co.,* 208 F. Supp. 485, 488 (D. Md. 1962); *Pan Am. Fire & Cas. Co. v. Revere,* 188 F. Supp. 474, 477 n. 8 (E.D.La. 1960); 7 C. Wright & A. Miller, *Federal Practice & Procedure,* §1710 at pp. 405-407 (1972); *cf. State Farm Fire & Cas. Co. v. Tashire,* 386 U.S. 523 (1967)(§1335 requires only "minimal diversity"). *See* Brief in Opp. to Pet. for Cert. 21-23.

Similarly, the Court of Appeals was correct in refusing to consider California's argument that a change in its inheritance tax procedure, which became effective only after the Fifth Circuit's decision had been rendered, dissipated previously existing jurisdiction. The revision in California law removes county treasurers from the inheritance tax collection procedure, and California contends that Alvord is therefore no longer a claimant and that diversity jurisdiction has now been erased. However, it is clear that the jurisdiction which attached when the original complaint was filed cannot be defeated by the unilateral action taken by California on the appeal of this case. *Smith v. Sperling,* 354 U.S. 91 (1957); *Mollan v. Torrance,* 9 Wheat. (22 U.S.) 537 (1824).

California next argues that even if subject matter jurisdiction under section 1335 is otherwise satisfied, a federal district court cannot entertain this action because 28 U.S.C. §1251(a) vests jurisdiction exclusively with this Court. But it is clear that because this Court's original jurisdiction is not constitutionally exclusive, Congress can grant concurrent original jurisdiction of such suits to the lower federal courts. *Ames v. Kansas,* 111 U.S. 449 (1884); *United States v. Louisiana,* 123 U.S. 32,36 (1887). Section 1251 (a) is merely a general directive from Congress that is superseded by statutes otherwise vesting jurisdiction in federal district courts in cases where a state happens to be a party. *See, e.g., United States v. California,* 297 U.S. 175 (1936); *Case v.*

Bowles, 327 U.S. 92 (1946); *Minnesota v. United States*, 125 F. 2d 636 (8th Cir. 1942)(construing section 233 of the Judicial Code, 28 U.S.C. §341, the predecessor of section 1251(a)).

That 28 U.S.C. §1335 similarly supersedes the exclusivity provisions of section 1251(a) is implicit in the holding of *Worcester County Trust Co. v. Riley, supra.* For if the predecessor of section 1251(a) precluded district court jurisdiction of such an interpleader action (or if subject matter jurisdiction was absent for lack of diversity, as California asserts here), this Court would surely have decided *Worcester County* on that statutory basis rather than unnecessarily deciding the Eleventh Amendment issue on which its judgment was based.[14] *See Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346-348 (1939) (Brandeis, J., concurring). And as discussed above, this Court's recent holdings in *Arizona v. New Mexico, supra*, and *Illinois v. City of Milwaukee, supra*, directly refute California's argument that no other court but this can entertain this action. *See also Massachusetts v. Missouri, supra.*

Finally, California urges that statutory interpleader is "unsuitable" because venue must be laid in one of the claimant states. Under 28 U.S.C. §1397 venue is restricted to districts "in which one or more of the claimants reside," and transfers under 28 U.S.C. §1404(a) are available only to districts in which the action originally "might have been brought." *See Hoffman v. Blaski*, 363 U.S. 335 (1960). While therefore correct in its premise that venue options for that interpleader are limited to districts within the claimant states, California is mistaken in its conslusion that an action under sec-

[14]Similarly, if venue in a claimant state were somehow to defeat statutory interpleader jurisdiction, the venue in *Worcester County*--laid as it was in the claimant State of Massachusetts--would have provided a non-constitutional basis for resolving that case, and this Court would not have decided the Eleventh Amendment issue.

tion 1335 is therefore inappropriate. A federal district court is a "national tribunal" *(Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 289 (1888)) and constitutes the "neutral forum" that California professes to seek. Indeed, the very reason underlying the grant of diversity jurisdiction to federal district courts was to provide a forum in which out-of-state litigants could escape local prejudice. 13 C. Wright & A. Miller, *Federal Practice & Procedure*, §3601 at p. 574 (1975).

One cannot help but wonder whether this venue issue, or the section 1251(a) argument discussed above, would have been raised here--or whether this original action would ever have been filed--if the district court had granted California's motion to transfer the interpleader action to Los Angeles.[15] California's objections to venue all rest on unfounded and unjustified assumptions about the quality of justice dispensed in federal district courts. This controvenes the far wiser and less parochial counsel that "we cannot presume that a trial will proceed other than fairly in any federal forum in which venue exists." *Chicago, R.I. & P.Ry. v. Igoe*, 212 F. 2d 378, 382 (7th Cir. 1954), *cert. denied*, 350 U.S. 822 (1955). *Accord, Patterson v. Louisville & Nashville R.R.*, 182 F. Supp. 95 (S.D. Ind. 1960).

An excellent example demonstrating the availability, efficacy and "suitability" of a federal district court as an alternative forum for the resolution of a suit allegedly between states is the recent litigation arising from the Texas Mediterranean fruit fly ("Medfly") quarantine. On February 24, 1981, California filed a motion for leave

---

[15]In the lower courts, no party even suggested that a district court lacked jurisdiction of the estate's interpleader action because 28 U.S.C. §1251(a) made the Court's jurisdiction exclusive. That position cannot be reconciled with California's motions to transfer the case to a federal district court in Colorado or Los Angeles. Only after the district court had denied those motions, and the Fifth Circuit had affirmed that ruling, dic California first raise its section 1251(a) argument in this Court.

to file a complaint with this Court against Texas, an application for a temporary restraining order, and a motion for preliminary injunction, all asserting that the Texas Medfly quarantine constituted a serious and imminent threat to the State of California. *California v. Texas*, No. 87, Original (1981). This Court subsequently issued a temporary order restraining the State of Texas from imposing a quarantine against fruits and vegetables grown in California.

Meanwhile, after that original action had been instituted, a group of California avocado growers filed suit against the Commissioner of the Texas Department of Agriculture in the United States District Court for the Northern District of Texas, seeking the same injunctive relief against the Texas quarantine as California was seeking from this Court. The Dallas district court entertained the action, agreed with the California plaintiffs, and worked out and entered an agreed order lifting the quarantine. *See* Appendix "B", *infra.*

On March 11, 1981, California informed this Court of the district court's order and requested that consideration of its motion for leave to file a complaint be deferred until mid-summer, just in case Texas might reinstate its quarantine. On April 6, 1981, this Court denied California's motion for leave to file a bill of complaint.

Having thus prevailed in the Medfly litigation by virtue of the outcome of the federal district court suit in Dallas, California's contentions in this case--that jurisdiction rests exclusively with this Court under 28 U.S.C. §1251(a), and that California will not receive impartial justice from a district court situated in Texas--ring less than true. For even if the avocado growers are not viewed as a mere surrogate for California in the Dallas proceeding (or vice versa in No. 87, Original), thus directly refuting California's exclusivity argument under section 1251(a), that district court action is in-

structive here in at least two respects. First, it shows that a federal district court in Texas can impartially administer justice even if the result is to override the decision of a Texas official in favor of California's interests.

Second, the avocado growers can be seen as analogous to the Hughes estate in this litigation. The interpleader action filed by the estate in federal district court against the state taxing officials is the equivalent of the suit filed by the growers against the Texas Commissioner of Agriculture. This interpleader can resolve the domicile dispute each state has with the Hughes estate just as fairly and effectively as the Dallas suit settled the issues tendered to this Court in No. 87, Original--and with similar savings of this Court's valuable judicial resources.

In sum, the interpleader action which has been pending in federal district court since the summer of 1978 is a suitable vehicle for a prompt, fair resolution of the domicile issue tendered here. Preliminary issues of joinder and venue have already been settled, and some depositions to preserve testimony have been taken in that proceeding. It provides an alternative forum, already in existence and awaiting this Court's directive, to which the Court can remit this litigation.

CONCLUSION

For these reasons, the motion for leave to file complaint should be denied.

DATED: May 11, 1981.

Respectfully submitted,

MARK WHITE
Attorney General of Texas

GILBERT J. BERNAL, JR.
Assistant Attorney General
Chief, Taxation Division
Post Office Box 12548
Austin, Texas 78711
(512) 475-4721

RICK HARRISON *
PATTON G. LOCHRIDGE
McGINNIS, LOCHRIDGE
& KILGORE
900 Congress Avenue
Austin, Texas 78701
(512) 476-6982

DAVID DEADERICK *
GIBBINS, BURROW, WASH
& BRATTON
Post Office Box 1452
Austin, Texas 78767
(512) 474-2441

Attorneys for Defendant,
State of Texas

* Counsel of Record

PROOF OF SERVICE

I, William David Deaderick, a member of the Bar of this Court, do hereby certify that three true and correct copies of the above and foregoing Brief in Opposition have been served on each of the following by depositing the same in a United States post office, with first-class postage prepaid, certified, return receipt requested, on this 11th day of May, 1981, addressed as follows:

Honorable Jerry Brown
Governor of California
State Capitol
Sacramento, California 95814

Honorable George Deukmejian
Attorney General of California
555 Capitol Mall, Suite 550
Sacramento, California 95814

Jerome B. Falk, Jr.
Steven L. Mayer
HOWARD, PRIM, RICE,
NEMEROVSKI, CANADY
& POLLAK
Suite 2900
San Francisco, California 94108

Charlie D. Dye
BROWN, MARONEY, ROSE,
BAKER & BARBER
1300 American Bank Tower
Austin, Texas 78701

Oscar C. Lilienstern
ANDREWS, KURTH,
CAMPBELL & JONES
25th Floor, Exxon Building
Houston, Texas 77002

Ronald E. Gother
GIBSON, DUNN
& CRUTCHER
515 South Flower
Los Angeles, California 90071

William David Deaderick